

FILED

08 MAY 21 PM 3:29

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

*[Signature]*

DEPUTY

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Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 0905 JM CAB

ASIF A. SIAL, an individual.	)	Civil Case No.
	)	
Plaintiff,	)	<b>COMPLAINT AND DEMAND</b>
v.	)	<b>FOR JURY TRIAL (Unlawful</b>
	)	<b>Debt Collection Practices)</b>
UNIFUND CCR PARTNERS; and	)	
DOES 1 through 10 inclusive;	)	
	)	
Defendants.	)	
	)	
	)	

**COMPLAINT**  
**I. INTRODUCTION**

1. This is an action for damages brought by an individual consumer against Defendants for violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* ("FDCPA") and the California Rosenthal Act, Civil Code §1788 *et seq.* ("Rosenthal Act") both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

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## II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1337. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendants transact business here and the conduct complained of occurred here.

## III. PARTIES

3. Plaintiff ASIF A. SIAL is a natural person residing in California.

4. Defendant UNIFUND, CCR PARTNERS ("UNIFUND") is a company doing business in California of collecting consumer debts owed to another, with its principal place of business located at 10625 Techwoods Circle, Cincinnati, OH 45242.

5. Defendants are all engaged in the collection of debts from consumers using the mail and telephone and regularly attempt to collect consumer debts alleged to be due to another. Defendants are "debt collectors" as defined by the FDCPA, 15 U.S.C. §1692a(6), and by the Rosenthal Act, California Civil Code 1788.2(c).

6. The true names and capacities, whether individual, corporate (including officers and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and alleges that each Defendant designated as a DOE is involved in or is in some manner responsible as a principal, beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or otherwise, for the agreements, transactions, events and/or acts hereinafter described, and thereby proximately caused injuries and damages to Plaintiff. Plaintiff requests that when the true names and capacities of these DOE Defendants are ascertained, they may be inserted in all subsequent proceedings, and that this action may proceed against them under their true names.

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1 7. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3).

2 8. The purported debt that Defendants attempted to collect from Plaintiff was a  
3 "debt" as defined by the FDCPA, 15 U.S.C. §1692a(5).

4 9. Plaintiff is a "debtor" as defined by the Rosenthal Act, California Civil Code  
5 §1788.2(h).

6 10. The purported debt which Defendants attempted to collect from Plaintiff was a  
7 "consumer debt" as defined by the Rosenthal Act, California Civil Code §1788.2(f).

8  
9 **IV. FACTUAL ALLEGATIONS**

10 11. The FDCPA was enacted to "eliminate abusive debt collection practices by debt  
11 collectors, to insure those debt collectors who refrain from using abusive debt collection  
12 practices are not competitively disadvantaged, and to promote consistent state action to  
13 protect consumers against debt collection abuses."

14 12. At a time unknown, UNIFUND acquired information regarding two alleged  
15 debts (the "DEBTS") on two credit cards in Plaintiff's name.

16 13. On June 1, 2007, Defendants filed suit in the Superior Court of California,  
17 County of San Diego, Case No. 37-2007-00059285-CL-CL-EC (the ACTION) to collect the  
18 DEBTS.

19 14. In the ACTION, Defendants alleged that Plaintiff owed a total principal amount  
20 of \$5,200.27; \$3,194.22 was allegedly for a credit card originating with "First Card Conv,"  
21 and \$2,006.05 was allegedly for a credit card originating with "Citibank."

22 15. Citibank had reported Plaintiff's account as delinquent by September 2001.

23 16. First Card Conv had reported Plaintiff's account as delinquent by May 2003.

24 17. The entire ACTION was time-barred; as it was filed past the statute of  
25 limitations.

26 18. Defendants obtained a default judgment against Plaintiff despite their  
27 knowledge that they had not served him with a copy of the summons and complaint in the  
28 ACTION.



1 19. Defendants garnished Plaintiff's wages despite their knowledge that they had  
2 not served him with a copy of the summons and complaint in the ACTION.

3 20. As a result of the conduct alleged above, Plaintiff suffered great stress and  
4 worry. Plaintiff was forced to incur attorney fees in connection with the ACTION.

5 21. Defendants submitted declarations and/or affidavits with false statements in  
6 support of their request for a default judgment.

7 22. As a result of the acts complained of above, Plaintiff suffered emotional distress.  
8

9 **V. FIRST CLAIM FOR RELIEF**

10 **(Against all Defendants for Violation of the FDCPA)**

11 23. Plaintiff repeats and realleges and incorporates by reference all of the foregoing  
12 paragraphs.

13 24. Defendants violated the FDCPA. Defendants' violations include, but are not  
14 limited to, the following actions taken against the Plaintiff:

- 15 (a) The Defendants violated 15 U.S.C. § 1692d by engaging in conduct  
16 the natural consequence of which is to harass, oppress, or abuse  
17 Plaintiff in connection with the collection of the alleged debt;
- 18 (b) The Defendants violated 15 U.S.C. § 1692e by using false, deceptive,  
19 or misleading representations or means in connection with the  
20 collection of a debt;
- 21 (c) The Defendants violated 15 U.S.C. § 1692e(2)(A) by giving the false  
22 impression of the character, amount or legal status of the alleged debt;
- 23 (d) Defendants violated 15 U.S.C. § 1692e(2)(A) by misstating the status of  
24 the debt as implying that the Defendant would prevail in the Action;
- 25 (e) The Defendants violated 15 U.S.C. § 1692e(10) by using a false  
26 representation or deceptive means to collect or attempt to collect any  
27 debt or to obtain information regarding a consumer;
- 28 (f) The Defendants violated 15 U.S.C. § 1692(f) by using unfair or



unconscionable means to collect or attempt to collect a debt;

(g) The Defendants violated 15 U.S.C. § 1692(f)(1) by attempting to collect an amount not authorized by the agreement that created the debt or permitted by law;

25. As a result of the above violations of the FDCPA, Defendants are liable to the Plaintiff for Plaintiff's actual damages, statutory damages, and attorney's fees and costs pursuant to 15 U.S.C. §1692k.

## **VI. SECOND CLAIM FOR RELIEF**

### **(Against all Defendants for Violation of the Rosenthal Act)**

26. Plaintiff repeats, realleges and incorporates by reference all of foregoing paragraphs.

27. Defendants violated the Rosenthal Act, by including but not limited to, the following:

(a) The Defendants violated California Civil Code §1788.15(a) by collecting or attempting to collect a consumer debt by means of judicial proceeding when the Defendant knows that service of process, where essential to the jurisdiction over the debtor of his property, has not been legally effected;

(b) The Defendants violated California Civil Code §1788.17 by failing to comply with the FDCPA as alleged above;

28. As a proximate result of Defendants' violations enumerated above, Plaintiff has been damaged in amounts which are subject to proof.

29. Defendants' violations of the Rosenthal Act were willful and knowing. Defendants are therefore liable to Plaintiff for Plaintiff's actual damages, statutory damages, and attorney's fees and costs pursuant to California Civil Code §1788.30.

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1 WHEREFORE, Plaintiff respectfully requests that judgment be entered against  
2 Defendants and each of them for the following:

- 3 A. Actual damages;  
4 B. Statutory damages pursuant to 15 U.S.C. §1692k and California Civil Code  
5 §1788.30(a).  
6 C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k and  
7 California Civil Code §1788.30(b) and §1788.30(c)  
8 D. For such other and further relief as the Court may deem just and proper.

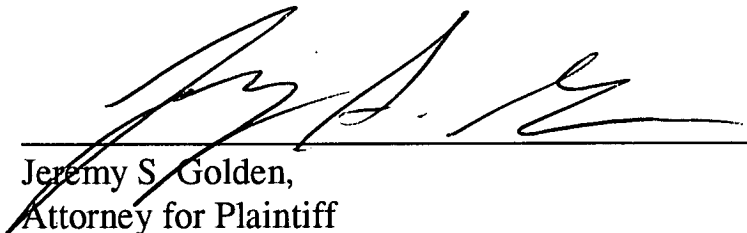
9  
10 Date: 5/20/08

11  
12   
13 Jeremy S. Golden  
14 Attorney for Plaintiff

15 **DEMAND FOR JURY TRIAL**

16 Please take notice that Plaintiff demands trial by jury in this action.

17  
18  
19 Date: 5/20/08

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22 Jeremy S. Golden,  
23 Attorney for Plaintiff  
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28



**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 151173 - SR**

**May 21, 2008  
15:28:55**

**Civ Fil Non-Pris**

USAO #: 08CV0905

Judge.: JEFFREY T MILLER

Amount.: \$350.00 CK

Check#: BC#1995

**Total-> \$350.00**

FROM: SIAL V. UNIFUND CCR PARTNERS  
DOES 1-10  
CIVIL FILING



JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ASIF A. SIAL, an individual.

(b) County of Residence of First Listed Plaintiff previously San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeremy S. Golden (SBN 228007) Law Offices of Eric F. Fagan 2300  
Boswell Rd., Suite 211 Chula Vista, CA 91914 Ph: 619-656-6656

## DEFENDANTS

UNIFUND CCR PARTNER 88 MAY 21 11 3:29 10  
Inclusive;

County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED BY: 9 DEPUTY

Attorneys (If Known)

08 CV 0905 JM CAB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. 1692 Various violations of the Fair Debt Collections Practices Act.

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

151173

AMOUNT

350.-

APPLYING IFP

JUDGE

MAG. JUDGE

5/21/08